

HON. FRANKLIN D. BURGESS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THERMION, INC.,

Plaintiff,

v.

THERMION METALIZING SYSTEMS,
LTD,

Defendant.

No. 3:05-cv-05409-FDB

STIPULATED PROTECTIVE ORDER

I. STIPULATION

Plaintiff, Thermion, Inc. and Defendant Thermion Metalizing Systems, Ltd. ("the parties"), through their respective counsel of record, hereby stipulate to be bound by the following covenants in this litigation, pertaining to use of materials and information regarded as confidential.

1. Definitions. As used in this Stipulation and Agreed Protective Order:

(a) "Document" and "Documents" mean any written, recorded or graphic matter, however produced, reproduced or stored, including without limitation matters recorded or stored electronically or in any form of data compilation or computer storage, which matters may

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1 be obtained or translated, if necessary, through physical computer, electronic or other retrieval
2 devices.

3 (b) "Materials" means any testimony or transcript designated as
4 "CONFIDENTIAL" under paragraph 3 below, and any brief, memorandum or other writing or
5 document containing any excerpt or portion of a confidential document or transcript.

6 (c) "Counsel" means a law firm representing a party in this action and its
7 attorneys and employees including without limitation legal associates, paralegal, clerical and
8 other support or office staff, but not any current or former employee of any party.

9
10 2. Use and Production of Documents. All Documents produced by any party, or by
11 any third party in this action and designated by that party as "CONFIDENTIAL" under
12 paragraph 3, shall be used solely for the prosecution and/or defense of this action by the parties
13 to the action, and may not be used for any commercial, marketing or other purpose by any party
14 or nonparty except as stated in paragraph 6 below. Documents and Materials designated
15 "CONFIDENTIAL" under this Stipulated Protective Order and the information contained therein
16 shall not be disclosed to any other person except as provided in this Stipulation.

17
18 3. Designation of Confidential Documents. Any party may designate Documents
19 produced, or to be produced in this action by it, or by a third party as "CONFIDENTIAL" where
20 he or she believes in good faith that such Documents contain confidential, commercial or
21 proprietary information, including trade secret or sensitive internal information. Any party may
22 designate Documents produced by it as "CONFIDENTIAL" by marking or stamping the
23 document in an appropriate place with the word "CONFIDENTIAL" and/or by attaching a cover
24 to the document which shall contain the following or similar language:
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CONFIDENTIAL SUBJECT TO PROTECTIVE ORDER

This document may not be seen, or distributed and the information in this document may not be disclosed, except as provided by the Protective Order entered by the United States District Court for the Western District of Washington in the matter of Thermion, Inc. v. Thermion Metalizing Systems, Ltd., Cause No. CV05-05409-FDB

Any party may designate as Confidential any documents produced by any third party by providing written notice to Counsel for all parties of the source and identify of the confidential documents. Upon receiving such notification, the designated documents shall be treated in the same manner as confidential documents produced by a party.

4. Confidential Depositions and Testimony. Whenever a Document designated "CONFIDENTIAL" is identified in a deposition, or when a person giving testimony in this action believes that his or her testimony will disclose confidential, commercial, proprietary or private information, the deponent or witness, or counsel may designate that part of the deposition or testimony as "CONFIDENTIAL" by advising the reporter of such fact on the record. The reporter shall then separately transcribe those portions of the testimony designated "CONFIDENTIAL" and shall mark the face of the separate transcript "CONFIDENTIAL--ACCESS LIMITED PURSUANT TO PROTECTIVE ORDER." The reporter may distribute such confidential transcripts only to counsel for parties in this action or file such transcript with the court only under seal.

Every deponent will be advised at the beginning of the deposition, on the record, of the terms of the Stipulation and Agreed Protective Order and will be asked to consent to its terms, including terms limiting the retention of portions of the transcript designated "CONFIDENTIAL" and "CONFIDENTIAL" exhibits.

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1 5. Briefs and Written Materials. When briefs, memoranda or other writings
2 prepared in this litigation contain excerpts or portions of any Document or Materials that have
3 previously been designated as "CONFIDENTIAL" by the party, the confidential matter shall be
4 subject to this Protective Order, and the briefs, memoranda and other writings shall be filed with
5 the court under seal and shall be marked "CONFIDENTIAL--ACCESS LIMITED PURSUANT
6 TO PROTECTIVE ORDER."

7
8 6. Access Restrictions.

9 (a) Confidential Documents produced during this litigation, confidential
10 Materials and information contained in confidential Documents and Materials shall not be
11 disclosed to any other person except:

12 (i) Counsel for any party in this action, including their legal
13 assistants, associates, paralegal, clerical and other support staff or services, as well as
14 stenographic reporters engaged in proceedings incident to the preparation for trial or the trial of
15 this matter;

16
17 (ii) Each of the named parties in this case, any officers of that
18 corporation, attorneys, including in-house legal staff involved in the defense of this litigation;

19 (iii) Experts and/or other professionals retained by any party for trial
20 preparation purposes;

21 (iv) The person who prepared or directly participated in the
22 preparation of any particular document;

23 (v) The person to whom a particular document or copies of were
24 addressed or delivered; and
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1 (vi) Witnesses in the case who, in the judgment of counsel, need to
2 review the documents for purposes of presenting the case. Such persons shall review
3 confidential documents only under supervision of counsel.

4 (b) Disclosure of Confidential Documents and Materials shall not be made to
5 any person until such person executes the Agreement attached to this Stipulation and Protective
6 Order as Exhibit A. Counsel for the party intending to make such disclosure shall be responsible
7 for ensuring that each person who is required to execute an Agreement has timely executed such
8 Agreement. After each person executes such Agreement, the attorney responsible shall, within
9 three (3) business days, send an original of that Agreement to opposing counsel and shall retain a
10 copy of the Agreement for his or her own file. In the case of consulting experts who are not
11 retained to testify at trial, a copy of the Agreement shall be forwarded to opposing counsel once
12 final judgment is certified in this matter.
13

14 7. Highly Confidential Documents – Attorneys’ Eyes Only. The parties compete
15 with each other in the sale of arc spray metalizing equipment and consumables. The parties
16 anticipate producing highly confidential business documents, and they believe that the producing
17 party would suffer serious and irreparable harm if those documents were reviewed by any
18 potential business competitor, including the opposing party. The parties are therefore creating a
19 special designation, “Confidential – Attorneys’ Eyes Only.” Documents marked
20 “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” shall be treated as “Confidential” materials
21 as set forth in this Protective Order, except that documents marked “CONFIDENTIAL –
22 ATTORNEYS’ EYES ONLY” can only be disclosed to the following groups of persons: (1)
23 counsel for any party in this action who is actively engaged in the conduct of this litigation, and
24 to legal assistants, associates, paralegal, clerical and other support staff or services to the extent
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1 reasonably necessary to render professional services in the litigation, as well as stenographic
2 reporters engaged in proceedings incident to the preparation for trial or the trial of this matter; (2)
3 the person who prepared or directly participated in the preparation of any particular document;
4 (3) the person to whom a particular document or copies of were addressed or delivered; and (4)
5 the court and court staff. The party introducing "Confidential – Attorneys' Eyes Only" during a
6 deposition or in a pleading shall be responsible for insuring that the special protections for the
7 "Confidential – Attorneys' Eyes Only" document is maintained and observed.
8

9 8. Custody and Copying Restrictions. All Confidential Documents and Materials
10 subject to this Protective Order and all copies and excerpts thereof, shall at all times remain
11 within the physical premises of the offices of counsel for the parties to this action except where
12 Documents or Materials are filed with the court under seal, or are taken to a deposition or court
13 proceeding for use during that deposition or proceeding, or used in connection with any
14 legitimate purpose provided for by this stipulation and agreed protective order. In all such cases,
15 an attorney or outside counsel shall be responsible for ensuring that appropriate safeguards are
16 taken to protect the Confidential Documents and Materials, including their immediate return to
17 counsel's office at the end of such deposition or court proceeding.
18

19 This Order does not preclude a party from retaining custody of its own Documents or its
20 own confidential information when not commingled with confidential information of other
21 persons or parties. In addition, the Order does not preclude either party from using its own
22 Documents or confidential information for any legitimate business purpose even if copies of
23 such documents or confidential information are marked confidential pursuant to this Order.
24

25 Copies of Documents and Materials designated as "CONFIDENTIAL" may be created
26 only by counsel and only to the extent necessary to assist in the conduct of this litigation. All

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1 such copies are subject to this Stipulation and Protective Order. At the termination of the action,
2 counsel for each party which has received confidential documents shall report the number of
3 copies made of any confidential document received.

4 9. Objection To Confidential Designation. Whenever a party objects to the
5 designation of a Document or testimony as "CONFIDENTIAL" or "CONFIDENTIAL -
6 ATTORNEYS' EYES ONLY", he or she may elect to notify the designating party of the
7 objection and request that the designating party remove the confidential designation. A party
8 may also object to the designation of "CONFIDENTIAL - ATTORNEYS' EYES ONLY" and
9 request that the designation be lowered to simply "CONFIDENTIAL." The designating party
10 has ten days from the date of receipt of the written objection to either remove the designation or
11 file a motion to continue the confidential status of the documents or testimony in question. Such
12 motion shall be noted for hearing as soon as reasonably practical. If the designating party does
13 not file a motion to continue the confidential status of the documents or testimony in question
14 within the ten-day deadline, then the confidential designation shall be deemed removed. Once
15 the designating party files a motion to continue the confidential status of the documents or
16 testimony, the documents or testimony shall continue to be subject to this Protective Order until
17 the Court enters an order ruling on the continued confidential status of the documents or
18 testimony. The burden of establishing continued entitlement of the "CONFIDENTIAL" or
19 "CONFIDENTIAL - ATTORNEYS' EYES ONLY" designation shall be upon the designating
20 party.
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24 10. Objection To Refusal to Allow Disclosure to Witnesses Employed by
25 Competitors. Whenever a party objects to the refusal of the other party to consent to disclosure
26 of confidential documents to a witness or potential witness who is employed by a competitor of
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1 such party, he or she may move for an order that the documents shall be disclosed. Until and
2 unless the court enters an order requiring disclosure, however, the documents shall not be
3 disclosed. The burden of establishing entitlement to disclosure shall be upon the moving party.

4 11. Termination Of Action. This Stipulation and Protective Order shall not terminate
5 at the conclusion of this action but shall remain in full force and effect thereafter for purposes of
6 preventing or responding to actual or potential violations of its terms.
7

8 Upon completion of this action, all Confidential Documents produced in this litigation,
9 including all copies thereof, shall be returned to counsel for the producing party. Counsel shall,
10 subject to this Protective Order, retain all Confidential Materials developed during the litigation
11 except, that after the completion of the action, counsel may destroy any such materials. A
12 deponent may retain a copy of his or her own deposition transcript except where portions of the
13 transcript have been designated as "CONFIDENTIAL." No deponent in this action will be
14 permitted to retain a copy of that portion of the deposition which may have been designated
15 "CONFIDENTIAL," nor any Documents or other Materials designated "CONFIDENTIAL"
16 which may have been marked or referred to during the deposition.
17

18 12. Additional Relief. Nothing in this Order shall preclude any party from applying
19 to the court for additional or different protective provisions with respect to specific documents,
20 materials or information or in respect to specific discovery requests in this action, as the need
21 should arise.
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1 DATED this ____ day of October, 2005.

2 LANE POWELL PC

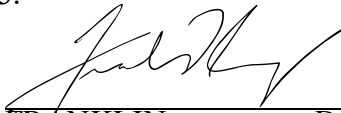
CHRISTENSEN O'CONNOR
JOHNSON KINDNESS

3
4 By: s/Stephanie J. Simmons, WSBA No. 30154
Stanton P. Beck, WSBA No. 16212
5 Paul D. Swanson, WSBA No. 13656
Attorneys for Defendant Thermion Metalizing
6 Systems, Inc.

By: s/Claire Hawkins, WSBA 31690
F. Ross Boundy, WSBA No. 00403
Attorneys for Plaintiff Thermion,
Inc.

7 PURSUANT to Civil Rule 26(c) and the above Stipulation of the parties, IT IS SO
8 ORDERED.

9 DATED this 12th day of October 2005.

10
11 

12 FRANKLIN D. BURGESS
UNITED STATES DISTRICT JUDGE

13 Presented by:

14 LANE POWELL PC

15
16 By: s/ Stephanie J. Simmons, WSBA No. 30154
17 Stanton P. Beck, WSBA No. 16212
18 Paul D. Swanson, WSBA No. 13656
Attorneys for Defendant Thermion Metalizing
19 Systems, Inc.

20 Copy Received; Approved as to form;
Notice of presentation waived.

21 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC

22
23 By: s/ Claire Hawkins, WSBA No. 31690
24 F. Ross Boundy, WSBA No. 00403
Attorneys for Plaintiff Thermion, Inc.

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AGREEMENT TO BE BOUND BY PROTECTIVE ORDER

I, _____ [print your name] of _____,
[print your address] am currently employed by _____.

I hereby acknowledge that I have received and read a copy of the Stipulation and Agreed Protective Order attached to this Agreement as Exhibit 1 and entered into by Thermion, Inc. v. Thermion Metalizing Systems, Inc., United States District Court for the Western District of Washington, Cause No. CV05-05409-FDB, and that I fully understand the terms and provisions of this Stipulation and Agreed Protective Order.

I hereby agree to be bound by all terms and provisions of this Stipulation and Agreed Protective Order.

I also agree to be subject to the jurisdiction of the United States District Court at Seattle, Washington for purposes of enforcing this Stipulation and Protective Order including contempt of court citation or other appropriate sanctions for any violation thereof.

DATED this _____ day of _____, 2005.

[illegible]

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that ____ signed this instrument and acknowledged it to be ____ free and voluntary act for the uses and purposes mentioned in this instrument.

DATED: _____

[Notary Signature]

[Type or Print Name of Notary]

NOTARY PUBLIC for the State of
Washington, residing at _____

My appointment expires: _____

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